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Governor

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Stephen A. Owens
Director

HAZARDOUS AIR POLLUTANTS RULE STAKEHOLDER MEETING SUMMARY

DATE: June 29, 2005
TIME: 9:30 a.m.
LOCATION: ASU Downtown Center, C368-370
502 E. Monroe Street, Phoenix, Arizona

PUBLIC ATTENDEES

(see attached)

ADEQ STAFF

Diane Arnst
Steve Burr
Ira Domskey
Kevin Force
Peter Hyde
David Lillie
Eric Massey
Nancy Wrona

ADDITIONAL ATTENDEES

Kelly Cairo, Gunn Communications
Pat Clymer, Weston Solutions
Kevin Eldridge, Weston Solutions
Theresa Gunn, Gunn Communications
Gary Lage, Weston Solutions
Teresa Verstraet, Weston Solutions

AGENDA

- Opening Remarks – “Why now?”
- Introductions and Meeting Overview
- Presentation and Discussion of the State Statute and Work Plan
- Introduction of Weston Solutions Team
- Presentation and Discussion of Stakeholder Issues and Concerns
- Next Steps
- Adjourn

OPENING REMARKS – “WHY NOW?”

Nancy Wrona reviewed the history of hazardous air pollutants rulemaking in Arizona. Currently, there is lack of rules governing pollutants not covered under Section 112 of the federal Clean Air Act. The goal of this process is to work with the stakeholders on achieving consensus regarding a rule requiring new and modified sources to install appropriate control technology. This rule will replace the Arizona Ambient Air Quality Guidelines (AAAQG).

INTRODUCTIONS AND MEETING OVERVIEW

Northern Regional Office
1515 East Cedar Avenue • Suite F • Flagstaff, AZ 86004
(928) 779-0313

Southern Regional Office
400 West Congress Street • Suite 433 • Tucson, AZ 85701
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Meeting facilitator Theresa Gunn reviewed the objectives of the meeting and guidelines for holding a good meeting. Based on stakeholder interviews prior to the meeting, she requested that participants consider the process as a new issue, and to leave issues related to the previous HAP rulemaking process in the past.

She called for introductions and asked participants to identify what they hoped to gain from the meeting. Responses included:

- Sense of parameters of the program.
- Find out more about RACT and development of these rules.
- See if the program is environmental justice or environmental injustice.
- Understand where we are going.
- Understand HAPs, and what it will mean to us.
- How the rule will affect air quality.
- Understanding of the process and what we can get.
- Interested in perspectives of people here today.
- Find out how this affects our facility.
- Learn about this process.
- See how statutory language translates to affect us.
- Curious about the timeframe.
- Information about public involvement.
- See how this relates to the federal rule.
- Understand outstanding issues.
- Determine why the cancer rate is higher in the northwest valley, and see if the Attorney General's office will enforce these rules.
- See how the rules will affect current and future operations.
- Would like to have every impacted source explain how they are affected economically.

PRESENTATION AND DISCUSSION OF THE STATE STATUTE AND WORK PLAN

Steve Burr provided a presentation on State HAP Rulemaking including an overview of the Clean Air Act regulatory background, and types of regulatory programs that can be implemented. This presentation will be added to the ADEQ website at www.azdeq.gov/function/laws/draft.html#haps. Highlights of the presentation included:

- There are two approaches to air regulation – risk management and risk reduction through control technology.
- A.R.S. §49-426.06 authorizes a risk reduction approach, new source review (NSR), modeled on 112(g).
- This is not a risk management program. It is an application of control technology.
- Regarding concerns about tracking cancer rates, this is not a program that would undertake an analysis, particularly not initially.
- This applies to certain new and modified sources of HAP.
- Federal HAPs listed in section 112(b) of Clean Air Act are automatically included.
- ADEQ has authority to list additional HAPs under §49-426.04. ADEQ doesn't plan on adding additional HAPs at this time.
- Sources subject to the program include:
 - All major sources of HAP – defined as a source with the potential to emit (PTE) 10 tons per year (TPY) of a single HAP or 25 TPY of any combination of HAPs.

- Area (non-major) sources with PTE of 1 TPY of a single HAP or 2.5 TPY of a combination of HAPs (but only if the source belongs to a category listed by ADEQ rule pursuant to §49-426.05).
- The rule would not affect a source seeking to renew a permit unless the modification fell under the definition of de minimis.
- Major sources are subject to maximum achievable control technology (MACT). These are stringent standards.
- Area sources are subject to hazardous air pollutant reasonable available control technology (HAPRACT), which is essentially a RACT standard.
- Weston Solutions' tasks include:
 - List source categories subject to the program.
 - Identify de minimis amounts for federal HAPs emitted by candidate source categories (draft outline prepared).
 - Identify criteria for listing state HAP in a future rulemaking (draft outline prepared).

Stakeholder questions and comments included:

- Will clustering be taken into account? *Response:* Evaluating emissions is not part of the process. Rather, if a source is subject to a program, a certain level of controls will be installed and an emission level from that point forward will be set. We hope to reduce the risk to an acceptable level, but do not make evaluations under this rule.
- Is clustering an appropriate topic for this group? *Response:* Our goal today is to identify issues that need to be discussed. We realize this is an important issue and will be Addressing it on a separate track with the three county air pollution control programs.
- What level of certainty are we applying? *Response:* We are using standard information from EPA databases.
- What is the definition of "adverse effects"? One in a million? One in ten million? *Response:* A standard risk assessment will be used. This issue will be noted for additional follow up.
- Will this be an ongoing program? *Response:* It is certain we will want to do this again in the future. We will evaluate a good list of sources now, and will want to add other source categories at a later time.
- Would modifications to section 112(g) trigger applicability of the Arizona program? *Response:* EPA has abandoned adoption of rules under section 112(g). This program goes beyond the federal level. There would have to be a modification under Arizona's program to affect an existing source. A modification to a facility under another program (e.g. New Source performance Standards) also may cause a source to be affected under the new rule.
- What HAPs will be included? *Response:* ADEQ is incorporating all federal HAPs.
- Will monitoring or modeling be used? *Response:* The rule will be based on modeling and will take into account background concentrations where possible.
- Is the South Phoenix Partnership part of this process? *Response:* This is a separate program, but it could apply to the Partnership.
- I would encourage you to look at both actual and potential emissions. *Response:* It is probably not feasible to model both.

- Potential emissions are just that – potentials. But actuals affect the community now. *Response:* Potentials encompass more sources than just actuals.
- Will Weston re-evaluate AAAQGs adverse effects levels? *Response:* Adverse effects are not currently evaluated. Weston will need to start fresh to determine levels for adverse effects.
- Will an ADEQ or federally determined de minimis take precedent? *Response:* This determination has not been made at the federal level.
- If EPA can't make a determination for de minimis, how will the state? *Response:* We will take a simpler approach.
- The federal HAPs lists 188 sources, whereas the AAAQGs list 296. What about the difference? *Response:* We will compare the lists to identify the differences. The federal lists include categories of HAPs. Several of the AAAQGs HAPs may fit into one federal category.
- What is meant by area source? *Response:* It was meant as a single source that does not fall under the definition of a major source.
- How will controls be defined? *Response:* This will be determined on a facility-by-facility basis.
- Will MACT apply to new sources? *Response:* The federal MACT standards that have been or are currently being developed typically apply to both new and existing sources. For those instances where a new or modified major source of HAPs is not regulated by an existing federal MACT, a case-by-case MACT determination is required to be made for the new or modified portions of the facility pursuant to Section 112(g) of the Clean Air Act.

INTRODUCTION OF WESTON SOLUTIONS TEAM

Ira Domskey introduced the Weston Solutions team. He noted that both the Weston scope of work and work plan are available on the ADEQ website. As additional documents are made public, they also will be posted on the website.

PRESENTATION AND DISCUSSION OF STAKEHOLDER ISSUES AND CONCERNS

Gunn reviewed initial stakeholder issues and concerns received during phone interviews and requested additional input.

Stakeholder questions included:

- What is the relationship between HAPs and AAAQGs lists? *Response:* We will cross-match the lists.
- Will Weston explain the modeling approach? *Response:* Yes.
- Will cost-benefit or economic impact enter the decision? *Response:* No, not in listing sources. Once we start applying the program, cost-benefit will be taken into account.
- Does the statute say ADEQ “may” list source categories or “must” list? *Response:* The statute says “may” list. ADEQ intends to list source categories that meet the statutory criteria.
- Will modeling include Title V source emissions? *Response:* Yes.
- This is a prospective rule. *Response:* Yes.
- If an existing source is not regulated under federal guidelines, the source is not regulated under this program, unless there is a modification. *Response:* That is correct.

- What had ADEQ wanted to change in the statute provisions? *Response:* ADEQ was told not to pursue a statute change due to timing with the sunset review, but rather to develop a regulatory program. State legislation was never drafted.
- This state program was perceived as a panacea. However, the facilities affected are on a prospective basis.
- There appears to be an economic disadvantage to a new business. *Response:* There are numerous precedents to this approach in other programs. It is easier and less expensive to install controls on a new or modified source rather than to retrofit. There is no retrofit obligation, and nothing in statute allows us to backtrack to regulate existing sources under this rule.
- What about the issue of clustering and collocation? *Response:* This will not be addressed as part of this rulemaking, however it is currently under discussion and will be addressed outside this stakeholder process.
- What HAP monitoring has been done? *Response:* There was a report completed in 1996 and we will try to make this available. ADEQ is also engaged with representatives from EPA, Tribal and county governments, and businesses in a Joint Air Toxics Assessment Program at sites. The data will be submitted to EPA to gain a better understanding on risk in the metro-area. There has been ozone precursor monitoring and hydrocarbon data collected as well as air toxics.
- Federal HAPs cover existing sources, and Arizona is looking at an NSR-type program. Are other programs similar to the Arizona one? *Response:* Arizona may be unique.
- Will an Arizona program require more than the federal program? *Response:* It is possible.

Other issues identified by stakeholders:

- Safe concentration – consider “clustering.”
- What role, if any, will collocation play regarding applicability?
- Was the original intent of “area” source for similar sources within a small geographical area?
- Cumulative impact is a federal Title VI issue (civil rights).
- Will ADEQ develop EJ guidance for HAPRACT (case by case) determinations in EJ communities?
- Once de minimis amounts are set by ADEQ for federal HAPs, if EPA sets their own de minimis amounts, which takes precedence?
- Relationship of state program to federal program: If complying with federal MACT or GACT, will the Arizona program require more?
- How does ADEQ plan to overcome the problems that prevented EPA from defining de minimis?
- Once source categories are identified, will ADEQ define MACT for each source? (i.e. area sources, major sources greater than 10 TPY PTE.)
- What HAP monitoring (ambient) has been done? What are results?
- Category prioritization should look at both actual and potential emissions.
- Need monitoring to validate the modeling.
- At some point in this process will Weston explain their modeling approach?
- Will the modeling include the source emissions from sources that are already in the Title V program?

- If a source has PTE over 1 TPY but there is no public exposure (i.e. no homes business, etc.) within two miles, why regulate?
- Will Weston also re-evaluate AAAQG adverse effects levels?
- Federal HAPs=188; AZ AAQG=296. What about the difference?
- The statute says ADEQ “may” list source categories – not mandatory. Will cost-benefit or economic impact enter the decision?
- Will Weston “adverse” health level be the basis for a source to demonstrate no controls are required?
- Will consideration of “adverse effects” accommodate a margin of safety?
- How will likelihood of “adverse effects” be characterized or quantified?
- §49-426.05 – What is the definition of “adverse effects”? One in a million? One in ten million?
- Will the modification itself, or the entire modified source, be regulated?
- Does a modification to a single piece of equipment that triggers the HAPs assessment, also trigger HAPs assessment for the entire facility?

NEXT STEPS

Gunn asked the stakeholders if they could support the statement, “We agree that it is good public policy to have a HAPs rule as required by Arizona statute. There was overall consensus from the stakeholders. Additional comments and questions included:

- I agree on a qualified basis – if based on good science. This is a broad statement.
- What choice do we have? *Response:* You could attempt to derail this process.
- Think we need to decide if it is necessary to go beyond the federal HAPs.
- It is essential to comply with the statute. Whether this will make good public policy remains unanswered.
- If we (as Arizona) have a current problem with emissions, this rule will not address the problem since it doesn’t cover existing sources.
- A rule is better than informal AAAQGs.
- I support the process as long as it is based on sound science.

Gunn reviewed the tentative schedule for the remainder of the informal rule process. She noted that draft modeling methods and three reports to be developed by Weston would be made available. Feedback included:

- Is something driving the schedule? *Response:* The docket deadline is in October, but this can be amended. We would like to finalize the rule by December 31, 2005.
- This seems like an overly ambitious schedule.
- During the summer, we have low attendance at our association meetings. It would be difficult to inform our members and provide feedback.
- Due to the high level of public interest in Tucson, this is an ambitious schedule. We need to deal effectively with areas outside of Phoenix. We may need general outreach meetings outside of the stakeholder process. *Response:* We want to give people two weeks to review materials between meetings. We would like to move forward with the current schedule and assess the pace in process. We can be flexible and will slow the process if need be.

- Do we have just 10 days to comment on the rule? *Response:* This schedule shows the informal process and is considered the preproposal stage, prior to the formal rulemaking timeframes.
- The public in Tucson will be angry to hear that new regulations will not affect existing facilities.

Gunn polled the group for preferences regarding meeting times. Stakeholder meetings held in Phoenix or Tucson are preferred on a weekday beginning at 9:30 or 10:00 a.m. There was a recommendation to hold any public meetings in Tucson on a weekday evening beginning at 6:00 p.m.

Nancy Wrona will discuss outreach workshops in Tucson, with assistance offered from Richard Grimaldi. She noted that schedule concerns will also be considered, and that the agency is very interested in addressing stakeholder issues.

Ira Domskey noted that sound science means both utilizing credible scientific work and listening to your constituency.

ACTION ITEMS

- ADEQ staff to add State HAP Rulemaking presentation to website.
- ADEQ to follow up definition of “adverse effects.”
- Eric Massey to see Steve Burr regarding cross-matching HAPs and AAAQGs lists.
- ADEQ to continue to consider clustering and collocation issues outside of this stakeholder group.
- ADEQ to add 1996 HAP monitoring report to Web site if possible.
- ADEQ to discuss outreach workshops in Tucson.

HAZARDOUS AIR POLLUTANTS RULE STAKEHOLDER MEETING SUMMARY

June 29, 2005

PUBLIC ATTENDEES

Bert Acken, Lewis & Roca
Christopher Andrews, Andrews
Environmental Mgmt.
Ann Becker, APS
Chuck Bischoff, Jordan Bischoff McGuire
& Hiser
Jeff Boxter, Stevens & Stevens
Steve Brittle, Don't Waste Arizona, Inc.
Dan Casiraro, SRP
Jo Crumbaker, Maricopa County Air
Quality Dept.
Susan Culp, Arizona League of
Conservation Voters
Brad Curd, Interplastic
Stan Curry, Gallagher & Kennedy
Scott Davis, APS
Cosimo DeMasi, Tucson Electric Power
Kara Downey, Arizona Electric Power
Cooperative
Phillip F. Fargotstein, Fennemore Craig PC
Don Gabrielson, Pinal Air Quality
Richard Grimaldi, Pima County DEQ
Larry Hawke, PCDEQ
Eric Heiser, Jordan Bischoff
Joy Herr-Cardillo, Arizona Center for Law
in the Public Interest
Cindy Ika, Mastercraft Cabinets, Inc.
Chris Janis, APS Coronado

Robert F. Kec, Western States Petroleum,
Inc.
Rollie Leeman, Intel
Wayne Leipold, Phelps Dodge Miami
Brett Lindsay, Phoenix Cement Co.
Jeremy A. Lite, Quarles & Brady Streich
Lang LLP
Greg Lundberg, Praxair Inc.
Andrea Martinick, APMA
C. V. Mathai, APS
Joey Matthews, American Woodmark
Pam Norris, SCA Tissue
Anu Pundari, El Paso Natural Gas
Steve Rakowski, Brown & Caldwell
Susie Stevens-Matthews, Stevens & Stevens
Michelle Pulich Stewart, Citizen/Educator
Susan Szabo, APS
Penny Allee Taylor, S W Gas
David Tierney, North American Composites
Steve Trussell, Arizona Rock Products
Assoc.
Lyle Tuttle, Maricopa County Mining
District #1
Bill Underwood, Gallagher & Kennedy
Bill Willis, American Woodmark
Alan Woodard, Kinder Morgan
Jeff Yockey, TEP
Linda Young, Intel